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Dated: June 24, 2002 Signature: *Richard Zimmermann*
(Richard Zimmermann)

Docket No.: 30105/32001/US
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

Carl W. Hastings, et al.

Application No.: 09/175,748

Group Art Unit: 1617

Filed: October 20, 1998

Examiner: R. Travers

For: PERFORMANCE-ENHANCING DIETARY
SUPPLEMENT

RESPONSE

Box Non-Fee Amendment
Commissioner for Patents
Washington, DC 20231

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Dear Sir:

In response to the Official Action dated January 7, 2002 (Paper No. 15), reconsideration of this application is respectfully requested.

REMARKS

In the action under reply, claims 11-14 and 25-27 were rejected under 35 U.S.C. 102 (a) as being anticipated by Gardiner Patent 6,136,339. Applicants respectfully submit there is no basis for rejection under Section 102(a) because this application was filed, and the invention was therefore constructively reduced to practice, long before issuance of the Gardiner '339 patent. Specifically, this application was filed more than two years earlier than Gardiner's issue date.

In the belief that the Official Action may have contained a typographical error and that the Examiner intended the rejection to be under 102(e) rather than 102(a), applicants submit herewith a Declaration by one of the co-inventors, David J. Barnes, establishing with documentation that Provantage (Reliv' International's name for the product embodying the